



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 26, 2005

Ms. Diane C. Wetherbee  
City Attorney  
City of Plano  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2005-03538

Dear Ms. Wetherbee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 222670.

The City of Plano (the "city") received a request for the calendars of the mayor and city manager, to include information concerning "appointments, meetings, and conferences pertaining to [city] business." You contend that the requested calendars are not public information subject to disclosure under the Public Information Act (the "Act"); alternatively, you claim the mayor's calendar contains information that is excepted from disclosure under section 552.109 the Government Code. We have considered your claims and reviewed the submitted representative sample of information.<sup>1</sup>

We begin by addressing your contention that the calendars are not public information. Only public information is subject to required disclosure under the Act. *See* Gov't Code § 552.021; *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ diss'd); Open Records Decision No. 452 at 3 (1986). "Public information" is defined under section 552.002 of the Act as:

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<sup>1</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Information is public information within the scope of the Act when it relates to the official business of a governmental body or is maintained by a public official or employee in the performance of official duties, even though the information may be in the possession of an individual. *See* Open Records Decision No. 635 at 4 (1995). This office has determined that information which clearly relates to a governmental body's official business is subject to the Act, regardless of whether the information is held by a particular official or employee, the governmental body's administrative offices, or the custodian of records. *Id.*

Upon review, we find that some of the information contained in the submitted calendars pertains to appointments, meetings, and other activities concerning the official duties of the mayor and city manager. We determine that this information relates to the official business of the city and is therefore public information for purposes of section 552.022 of the Government Code. We further determine, however, that information in the submitted calendars that does not pertain to the official duties of the mayor and city manager is not public information and need not be released.

With respect to the information in the submitted calendars that we find is public information, we address your claim under section 552.109 of the Government Code. Section 552.109 protects private correspondence and communications of elected office-holders when release of the information "would constitute an invasion of privacy." *See* Gov't Code § 552.109. In determining whether information is excepted from disclosure by section 552.109, this office relies on the same common-law privacy test applicable under section 552.101 of the Government Code.<sup>2</sup> *See* Open Records Decision Nos. 506 (1988), 241 (1980), 212 (1978); *see also* Open Records Decision No. 40 (1974) (providing that section 552.109 may protect content of information, but not fact of communication).

Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation*

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<sup>2</sup> Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses the doctrine of common-law privacy.

included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. To the extent the public information contained in the submitted calendars reflects the correspondence or communications of elected office-holders, we find that the information is not highly intimate or embarrassing and is subject to a legitimate public interest. *See* Open Records Decision Nos. 444 (1986), 405 (1983) (job duties and performance of public officials or employees are matters of legitimate public interest); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). We find none of the submitted information is protected by common-law privacy and therefore determine that none of the submitted information is excepted from disclosure under section 552.109. Accordingly, the portions of the submitted calendars that consist of public information must be released to the requestor.

In summary, to the extent the information in the submitted calendars pertains to the official duties of the mayor or city manager, the information is public information of the city and must be released. Information in the calendars that is not related to the official duties of the mayor or city manager, however, is not public information and may be withheld.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'DS', followed by a long horizontal line extending to the right.

David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 222670

Enc: Submitted documents

c: Mr. Lee Powell  
Dallas Morning News  
P.O. Box 655237  
Dallas, Texas 75265  
(w/o enclosures)